

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WALTER V. QUAST,)
)
Appellant,)
)
vs.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)

PCHB No. 457

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a cancellation of Ground Water
Permit No. 9852; having come on regularly for an informal hearing
before the Pollution Control Hearings Board on January 15, 1974, at
Spokane, Washington; and appellant Walter V. Quast appearing through
his attorney, Laurence Libsack and respondent Department of Ecology
appearing through its attorney, Charles W. Lean; and Board member
present at the informal hearing being W. A. Gissberg; and the Board
having considered the statement of facts, exhibits, records and files
herein and having entered on the 21st day of January, 1974, its

1 proposed Findings of Fact, Conclusions of Law and Order; and the
2 Board having served said proposed Findings, Conclusions and Order
3 upon all parties herein by certified mail, return receipt requested
4 and twenty days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusions and Order; and the Board being fully advised in the
7 premises; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 21st day of
10 January, 1974, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 1st day of March, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 Walt Woodward
16 WALT WOODWARD, Chairman

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Mary Ellen McCaffree
20 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND
ORDER

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FINDINGS OF FACT,
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A hearing was held on this appeal in Spokane on January 15, 1974 before W. A. Gissberg, a member of the Board and presiding officer. Appellant appeared by and through his attorney, Laurence Libsack; respondent appeared by its attorney, Charles W. Lean.

The parties conducted an informal conference in an attempt to achieve an amicable settlement, but failed in that attempt. However, the parties did agree to a statement of facts which will govern the matters to be considered by this Board on the appeal. Such statement of facts were recited on the record at the informal hearing and it was

EXHIBIT A

1 stipulated by and between the parties that no transcript of the hearing
2 would be required nor would such a transcript need to be considered by
3 the Board members who did not participate in the hearing itself; rather
4 the parties stipulated that the Board could and would decide the merits
5 of this appeal based upon the following agreed

6 STATEMENT OF FACTS

7 1. All of the facts stated and alleged in appellant's Notice of
8 Appeal, on file herein, are true and such facts are incorporated herein
9 as fully as though set forth at length.

10 2. Respondent's Exhibit No. 1 is a letter from respondent to
11 appellant dated May 21, 1973 and it was received by appellant on
12 May 22, 1973. Appellant did not respond to that letter nor did he in
13 any other way or fashion communicate to the Department of Ecology
14 subsequent to the time he received the letter except by filing his
15 Notice of Appeal herein.

16 3. Respondent's Exhibit No. 2 is a copy of a letter from
17 respondent to appellant on September 11, 1973 and which was received by
18 appellant on September 12, 1973. The letter is an order cancelling
19 appellant's permit and appellant's response thereto was to file his
20 appeal within thirty days.

21 4. Respondent's Exhibit No. 3 is a copy of respondent's permit
22 to appropriate water.

23 5. Respondent would not have drilled the 8 inch well to a depth
24 of 475 feet, or at all, but for the fact that his domestic well went
25 dry.

26 6. Appellant's property lies within an area within which respondent

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 is presently not ruling on water applications and within which is in
2 a "hold" area.

3 7. That within the next month the respondent will have adopted
4 Washington Administrative Code rules and regulations which will have the
5 effect of removing the "hold" on the permit applications within the area
6 of appellant's property and that all of the applications which have been
7 filed with respondent will be ruled upon by it in the order in which
8 they have been received.

9 8. If appellant now submits a new application for a new well at the
10 same location, the application would probably be favorably ruled upon
11 within the next several months by respondent, based upon the facts now
12 known to the Department of Ecology.

13 Respondent contends that this appeal is governed by RCW 90.03.320
14 and that appellant has failed to show cause why the permit should not
15 be canceled by respondent and that since respondent has failed to do so
16 it is mandatory that the permit be canceled.

17 Respondent further contends that the facts shown on the Notice of
18 Appeal evidence and prove an abandonment of appellant's plans to drill.

19 Appellant contends that he commenced to work on his combination
20 domestic-irrigation well on September 1, 1973, eleven days prior to the
21 date of the Notice of Cancellation of Permit; that appellant,
22 therefore, did comply with respondent's letter of May 21, 1973 because
23 that letter means that so long as appellant commenced his construction
24 prior to the actual date of cancellation of the permit, the permit could
25 not thereafter be canceled.

26 The Board, having considered the foregoing Statement of Facts,

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 respondent's exhibits and the contentions of the parties, make and
2 enter the following

3 CONCLUSIONS OF LAW

4 I.

5 The Board has jurisdiction of the parties and the subject matter
6 of this appeal.

7 II.

8 Section 33, Chapter 117, Laws of 1917 and RCW 90.03.320 provide
9 as follows:

10 "Actual construction work shall be commenced on any project for
11 which permit has been granted within such reasonable time as shall
12 be prescribed by the supervisor of water resources, and shall
13 thereafter be prosecuted with diligence and completed within the
14 time prescribed by the supervisor. The supervisor, in fixing the
15 time for the commencement of the work, or for the completion
16 thereof and the application of the water to the beneficial use
17 prescribed in the permit, shall take into consideration the cost
18 and magnitude of the project and the engineering and physical
19 features to be encountered, and shall allow such time as shall be
20 reasonable and just under the conditions then existing, having
21 due regard for the public welfare and public interests affected:
22 and, for good cause shown, he shall extend the time or times
23 fixed as aforesaid, and shall grant such further period or periods
24 as may be reasonably necessary, having due regard to the good
25 faith of the applicant and the public interests affected. If
26 the terms of the permit or extension thereof, are not complied
27 with the supervisor shall give notice by registered mail that such
permit will be canceled unless the holders thereof shall show
cause within sixty days why the same should not be so canceled.
If cause be not shown, said permit shall be canceled."

III.

22 Within the meaning of the foregoing statute, appellant has never
23 shown "good cause" why respondent should grant extension of time within
24 which he could commence work, or complete the same and apply the water
25 to the beneficial uses prescribed in the permit.

IV.

27 Appellant did not comply with the terms of the permit and respondent

1 properly gave notice that the permit would be canceled. Appellant,
2 having failed to show cause why the permit should not be canceled,
3 mandates and requires respondent to cancel the permit.


4 From which comes the following

5 ORDER

6 The appeal is denied and respondent's Notice of Cancellation of
7 the permit is sustained.

8 DONE at Lacey, Washington this 21st day of January, 1974.

9 POLLUTION CONTROL HEARINGS BOARD

10 
11 W. A. GISSBERG, Member

12 
13 WALT WOODWARD, Chairman

14 
15 MARY ELLEN McCAFFREE, Member

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER